

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA)
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)
)
v.) CASE No.: 1:20CR00026
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JAMES BROWN)

Sentencing Memorandum in Favor of a Time-Served Sentence

James Brown asks this Court to impose a sentence of time served. Such a sentence is reasonable and adequately accounts for the 18 U.S.C. §3553(a) factors that the Court must consider. Mr. Brown plead guilty pursuant to a plea agreement that included a sentencing range of zero to twenty-four months. (Dkt.No.131). The advisory guideline range is eight to fourteen months. (PSR ¶53). He has earned thirty days of jail credit to date and has been subject to conditions of house arrest while on bond.

Mr. Brown is before the Court for sentencing for a conviction of violating 42 U.S.C. §3631(a), commonly known as the cross-burning statute. Given the charge and the extensive media attention the incident received, it would be easy to classify James Brown as a racist and a danger to the community. Truth be told, he is anything but a racist, and he is an asset to the community. His conduct on June 14, 2020, which he wholeheartedly regrets, was out of character for him and represents aberrant behavior. His current employer writes: “not myself or any of the other workers have witnessed any behavior that would be consistent with the crime in which he has been charged.” (Dkt. 140). The crime he committed does not reflect the

good person James Brown was before the incident, nor the good person he will be in the future.

A native New Yorker, James, or “Jimmy” as he is known to his family and friends spent all his life on Long Island until he moved to Smyth County, Virginia in 2018 to live near his uncle. He is 41 years old, and until this felony conviction, had only a conviction for driving on a suspended driver’s license for which he paid a fine of \$50.00. He has a criminal history score of zero. (PSR ¶36).

James is from a close-knit Sicilian family. He was raised in a working-class neighborhood on Long Island. His mother Penelope raised James and his siblings by herself for several years when James’ father was incarcerated. Penelope says, “everyone there worked hard just to make ends meet. We were all poor, so nobody was better than anyone else.” There were people of multiple ethnicities and cultures, including natives of diverse places such as the Dominican Republic, Puerto Rico, Mexico, and India in their neighborhood. James recalls there were more African American people than Caucasian people – and they all got along. He had friends of all races. His significant other and mother of his two sons, Viani Ayala, who is Puerto Rican, grew up with James on Long Island. James remains close with many of his childhood friends. Letters of support from several of his racially diverse childhood friends are attached collectively as Exhibit 1.



James (fourth from left) and his childhood friends from Long Island enjoying a reunion as adults.

Hyperactive as a child, James was diagnosed with a learning disability and was placed in special education classes in school. He earned a high school diploma and received vocational training. Work is important to James. He has worked all his life, having jobs such as running heavy equipment at a plant nursery and working in housekeeping in a nursing home facility where he became the union representative for the SEIU (Service Employees International Union).

Family is also important to James. He is the father of three children, an adult daughter and two minor sons. Family photographs of James and Viani are attached as Exhibit 2, offered under seal.

To give his family the opportunity for a better life, James and Viani moved from Long Island to Southwest Virginia where the crime rate is much lower. He was drawn to the natural beauty of the area and wanted his children to grow up in a safer

environment than living in the city. His uncle had moved to the area earlier, so James and his family moved to Virginia in 2018. James found a job in construction and the children enrolled in school.

James made efforts to be a good neighbor. He helped his elderly neighbors on the street by mowing their yards and doing odd jobs at no charge. He invited a bi-racial couple who were homeless to stay in his home so they could spend time with their children who lived next door with their grandmother.

His adult daughter Sabrina Brown joined him in Virginia, and she became involved in a relationship with a young man from the area. Later, James and Viani were thrilled to learn that James' daughter was pregnant, and they looked forward to the birth of their first grandchild.

Shortly after they moved to Virginia, James and his family became friends with Briggette Thomas, (who is Black) and her children. The two families often socialized together. Ms. Thomas' children called James "Neighbor Dad" because James played with the neighborhood children and invited them into his home for snacks and cookouts. James taught Ms. Thomas' son how to rollerblade so he could get a job at the Sonic restaurant. James would leave his back door unlocked so Ms. Thomas' son could come into his house if he needed a place to stay. James would often babysit Ms. Thomas' daughter after school until Ms. Thomas arrived home from work. On one occasion, Ms. Thomas' son joined James and his family for an outing to the carnival. A photo from that occasion is attached as Exhibit 3, offered under seal.

At some point the friendship between James and Viani's extended family and Briggette soured. When questioned by the FBI after the fire, James reported they had

been friends with Brigette until there was a disagreement between him and Brigette over a female friend of his. Brigette told the FBI that she had an argument with Sabrina Brown's fiancé, Randy Delp, and that she had spat on him.

What led James Brown to set a fire in the burn barrel in Brigette Thomas' yard, someone who had been his friend? These words: "***I'm glad your baby died.***"

Those were the words hurled at Mr. Brown's daughter, Sabrina Brown, by Brigette Thomas, just a few weeks after her baby (and Mr. Brown's first grandchild) died.¹ Mr. Brown's grandson was born prematurely on May 13, 2020 and died on May 26, 2020, just under two weeks old. When his grieving daughter told James what Ms. Thomas said about his grandson, and further that Ms. Thomas had spat on her fiancé, James became admittedly angry.

James could not get the words "***I'm glad your baby died***" out of his head; it was if the words were on constant replay in his mind. The words haunted him. He allowed his anger, during his own time of grief over losing his grandson, to overcome his good judgment. Those hurtful words led to James' misguided and fateful decision to send a message to Ms. Thomas. His regrettable and admittedly spiteful actions in setting the fire were directed by his personal animosity towards Ms. Thomas. As James' daughter told the investigators when questioned about James' motive: "*He did not burn the cross in her yard because he is some big white supremacist. He did it to say f*** you.*"

¹ A copy of the obituary for Mr. Brown's grandchild is attached as Exhibit 4.

James sincerely regrets his short-sighted actions. At the time he set the fire, he did not consider the negative effect his act of personal retaliation against his neighbor would have on the greater Marion community. He apologizes to Ms. Thomas and her children for the fear and distress he now understands that he caused the Thomas family. He also apologizes to the people of Marion and Smyth County for his actions.

After his case is resolved, and when allowed by the Court, James, and his family plan to return to Long Island to live with his sister where he has the promise of a job. Given his work ethic and the plentitude of jobs, he will likely gain employment quickly.

For all these reasons, James Brown asks the Court to impose a sentence of time-served, with a term of supervised release.

Respectfully submitted,

James Brown
By Counsel

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was electronically filed and will be forwarded to the Assistant United States Attorney, this 17th day of August 2021.

s/Nancy Dickenson-Vicars